

**MINUTE ENTRY  
FALLON, J.  
January 18, 2002**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**IN RE: PROPULSID** : **MDL NO. 1355**  
**PRODUCTS LIABILITY LITIGATION** : **SECTION "L"**  
: **JUDGE FALLON**  
..... : **JUDGE AFRICK**

**THIS DOCUMENT RELATES TO ALL CASES:**

A pretrial status conference was held January 11, 2002 at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Richard Arsenault, Walter Dumas, Fred Longer, Arnold Levin, Donn Christensen, Edward Parr, Jr., Jim Watts, Bob Wright, Jim Capritz, Lynn Swanson, Dawn Barrios, Larry Morris, Barry Hill, J. Bradley Duhe, Stephen Murray, James Dugan, Julie Jacobs, Leonard Davis, and Russ Herman. In attendance for Defendants were James Irwin, Thomas Campion, Charles Preuss, Kim Meaders, Lori Moser, and Chris G'sell. At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 13 of Plaintiffs' and Defendants' Liaison Counsel.

1. Update to Rolling Document Production and Electronic Document Production

Plaintiff's Liaison Counsel ("PLC") informed the Court that it has received from the defendants the two particular databases which were mentioned at the last pretrial status conference — the ARISg database and the Navigator. PLC indicated that there are five (5) more databases which the Defendant

must produce.

Defense Liaison Counsel ("DLC") indicated that he has forwarded to PLC approximately 135 videotapes as part of the media production. PLC and DLC have reached an agreement whereby DLC will duplicate the videotapes at the expense of PLC.

2. State Liaison Counsel

PLC informed the Court that the members of the SLC have been actively involved in creating a coordinated deposition schedule for MDL and state counsel pursuant to the coordination agreement memorialized in Pretrial Order No. 14. PLC also informed the Court that the members of the SLC will conduct a census of claims so that they may be classified and grouped for settlement negotiation purposes.

3. Plaintiff Profile Forms and Authorizations

As of Tuesday, January 8, 2002, Defendants had received 1,251 Patient Profile Forms ("PPFs"), 60 are currently overdue, and 12 PPFs will become due within thirty (30) days.

Defendants WITHDREW their Motion to Dismiss the claims of Takala Freeman, Theresa Ziegler, Stephanie Baumwell, John Weaver, Billy Endicott, and Maudie Sparks.

The Court heard Defendants' Motion to Compel and Secondarily to Dismiss with Prejudice relative to the following claimants for failure to submit the appropriate authorizations for release of medical and employment records to Defendants as required by Pretrial Order No.9: Marlene Hartman, Barbara Ray, Irene Guitroz, Dorothy Jordan, Temple Clark, Robert Ketchum, Gregory Batsite, Sr., Terri Terrebonne, as next friend to Alton Terrebonne, Adrienne Schneider, Vickey Maples, Linda Shields, and Early Washington. The Court GRANTED the motion and ORDERED that February 1,

2002 be set as the deadline date by which the aforementioned claimants must fully comply with Pretrial Order No. 9 or be dismissed with prejudice.

DLC submitted to the Court a proposed order dismissing the claim of Betty Manasco, individually and on behalf of the Estate of Rickey Manasco (No. 01-1300). The Court earlier had deferred ruling on the motion until Friday, January 11, 2002 so as to afford Plaintiff's counsel an opportunity to appear and oppose the motion to dismiss. The Court will take appropriate action to dismiss the claim with prejudice.

4. Subpoena to FDA

PLC advised the Court that he has recently received documents from FDA and is in the process of verifying whether there has been full compliance with the subpoena. Accordingly, PLC requested that the Court defer ruling on the Motion to Compel Production which was originally filed on July 13, 2001. IT IS ORDERED that the Motion to Compel FDA to Produce Documents is DISMISSED without prejudice to the right of PLC to urge the motion at a later time should such be necessary.

5. Service List of Attorneys

DLC provided the Court with an updated list of attorneys in the MDL case as well as related state court cases.

6. Ongoing Studies/Subpoena to BevGlen

PLC informed the Court that BevGlen is sending a document of certification to DLC. If certification is not received, PLC will reset its Motion to Compel.

DLC informed the Court that it desires to be made known of any participants in the study

conducted by Dr. William Shell who are now claimants. PLC has objected to the release of such information. The parties will attempt to mutually resolve this issue.

7. Third Party Subpoena Duces Tecum Issued by PSC

PLC has received the majority of certifications from DLC. As of January 8, 2002 there remain three (3) certificates which must be produced. PLC is also awaiting documents subpoenaed from Covance and anticipates filing a motion to compel at the next monthly pre-trial status conference.

8. Motion to Enter Scheduling Order for Motion and Hearing on Class Certification

A scheduling order for motion and hearing on class certification has been approved by the Court and is adopted as this Court's Pretrial Order No. 15. Class certification hearing will be held on Wednesday, April 10, 2002.

9. Plaintiffs' and Defendants' Respective Requests for Production of Documents

PLC and DLC informed the Court of a discovery issue involving the defendants and plaintiffs in a Tennessee state court proceeding. Tennessee counsel indicate that there has not been full compliance with a discovery request pre-dating the State-Federal Coordination Agreement set forth in Pretrial Order No.14. PLC indicated that he will schedule a Local Rule 37.1 conference to address this issue.

The Court noted that the State-Federal Coordination Agreement was not intended to supplant pre-existing discovery agreements.

DLC indicated that on June 5, 2002, defendants served their Request for Production of Documents Propounded to Plaintiffs--Set No. Two. Defendants are awaiting a response.

10. PSC's Petition for an Order Securing an Equitable Allocation of Counsel Fees and Costs for Common Benefit Work.

On December 26, 2001, the Court signed Pretrial Order No. 16 which establishes a Plaintiff's Litigation Expense Fund to compensate and reimburse attorneys for services performed and expenses incurred for common benefit.

11. Settlement Negotiations

PLC informed the Court that it has brochured one case and presented it to the defendants in furtherance of settlement negotiations. PLC intends to brochure more cases from those categories of cases selected by the defendants, generally death and torsade cases.

As indicated above, SLC will be assigned the task of conducting a census of filed and unfiled cases in each of six categories of cases.

12. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Friday, March 8, 2002 at 9:00 a.m.